

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.933 OF 1998

Kantilal Bansilal Kankaria

..Petitioner.

Vs.

Peter Norman Pereira & anr.

..Respondents.

...

Mr. V.B. Naik for the Petitioner.

None for the Respondents.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

14th November, 2005.

P.C. :

1. Special Civil Suit No. 408 of 1984 was filed by the Respondents against the Petitioner for the recovery of monies together with interest. The suit was decreed by the Trial Court on 22nd April, 1988 and the Petitioner was directed to pay an amount of Rs.49,762.50 together with interest at the rate of 6% per annum from the date of institution of the suit until payment or realization. Execution proceedings were initiated on 23^d January, 1990 in the form of Special Darkhast 25 of 1990. It would appear from the details which have been set out in Exh.D to these proceedings, that the Petitioner paid diverse sums of money in installments

between 12th February, 1992 and 30th March, 1993 amounting in all to Rs.66,697/-. The Petitioner filed two applications one at Exh. 33 under which a payment of Rs.11,646.14 was made on 30th March, 1993 and a purshis at Exh.36 for the disposal of the Darkhast as fully satisfied. In October 1997 the decree holder amended the Darkhast and sought an enhancement of the amount reflected therein by a sum of Rs.23,197/- towards over due interest payable on the principal amount since 23rd January, 1990 when the Original Application for execution was instituted. The Petitioner moved an application on 20th December, 1997, seeking a direction that the decree should be marked as satisfied and that the Darkhast be disposed of as such. However, in the alternative it was submitted that the manner in which interest has been calculated is erroneous and that an inquiry be held in regard to the correctness of the figure in the Darkhast as amended. The application filed by the Petitioner has been dismissed by the impugned order dated 17th January, 1998. When this Civil Revision Application came up for admission, the application was admitted and by an order dated 16th October, 2000 interim relief was granted in terms of prayer

clause (d) restraining the decree holder from demanding the enhanced amount, subject to the Petitioner depositing an amount of Rs.14,000/- in the executing Court. The executing Court was directed to permit the Respondent to withdraw that amount.

2. Counsel appearing on behalf of the Petitioner is unable to state before the Court as to whether the aforesaid amount of Rs.14,000/- as directed by this Court on 16th October, 2000 has in fact been deposited.

3. While dismissing the application filed by the Petitioner the executing Court has noted that the decree holder was entitled to interest at the rate of 6% per annum from the date of the institution of the suit until the full decretal amount was paid. In the execution application that was filed on 23rd January, 1990, the decree holder had prayed for the recovery of the principal amount along with interest till the filing of the Darkhast. The Petitioner, however, did not deposit the amount immediately and various amounts were deposited from time to time. The executing Court is, in my view,

correct in holding that the Petitioner was not exempted from the liability to pay interest, after the date of institution of the Darkhast because the interest would continue to run until payment of the full decretal amount is made. In the circumstances, the executing Court was not in an error in holding that the Petitioner is liable to meet the entire decretal claim together with interest. The first prayer of the Petitioner for marking the decree as satisfied was therefore liable to be rejected and has been correctly rejected. That however still leaves the question open as to what amount would be left in balance to be paid by the Petitioner on account of interest towards decretal dues. The executing Court shall now proceed to make that determination with due notice to the Petitioner and the Respondent. In the event that the Petitioner has deposited an amount of Rs.14,000/- in compliance with the interim order of this Court dated 16th October, 2000, he shall be entitled to credit in respect of the aforesaid amount. In the event that the amount has not been deposited, the correct amount that is due and payable by the Petitioner to meet the total decretal dues shall be worked out by the executing Court accordingly. The Civil

Revision Application shall accordingly stand disposed of. In the circumstances of the case, there shall be no order as to costs.